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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 08/822,397
Filing Date: March 20, 1997
Appellant(s): SCHWAB ET AL.

John Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/26/2009 appealing from the Office action mailed 05/28/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2005-1014

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,930,160	VOGEL	5-1990
5,664,046	ABECASSIS	9-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 18-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel, (U.S. Pat # 4,930,160), in view of Abecassis, (U.S. Pat # 5,664,046).

Considering claim 18, the amended claimed method of automatically changing from a first TV program to an alternate transmission at a TV viewer location, comprising the steps of:

'entering, at the viewer location, information regarding a viewing preference', reads on disclosure in Vogel that a viewer may input channel selection and preferred Classification information for the purpose of local censorship of received video programming, see col. 4, lines 17-67.

'transmitting a TV program from a source to a viewer location', reads on Vogel which is at least directed to broadcast transmission/reception of video programming, see col. 2, lines 64-68; col. 3, lines 5-67.

'receiving the TV program at a viewer location over a first TV channel, the TV program including a pointer to an alternate TV channel providing an alternate TV program', and *'automatically switching the TV program to the alternate TV program using the pointer & information previously entered by the viewer without requiring any additional viewer intervention at the time of switching'* is met by the discussion in Vogel that teaches that a classification code embedded within a TV program is extracted by the receiver/decoder and is used to control the instant receiver/decoder to switch to receive alternate programming based on whether the embedded classification code exceeds the user preference, see col. 3, lines 56-67; col. 6, lines 15-45.

As for the further claimed feature of, *'providing an alternate TV program with subject matter directly related to the TV program'*, even though Vogel is directed to providing a viewer with alternate programming for the purpose of censorship, the reference does not explicitly state that the alternate material is directly related to the received TV program. Nevertheless Abecassis, which is in the same field of endeavor of providing customized versions of a TV program based on the customer's preference, teaches substituting portions of the TV program that are outside of the classification preferences of the customer, with a version of the TV program that is within the classification of the customer, col. 4, lines 1-34; col. 7, lines 29-56; col. 8, lines 3-60; col. 9, lines 31-46 & col. 10, lines 59-65. Thus, in Abecassis the alternate material is directly related to the main program, Abstract; col. 23, lines 1-17. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Vogel with the improvement of providing a customer with alternate material from the same program, as taught by Abecassis, see col. 2, lines 47-60.

It is furthermore pointed out that Vogel teaches that the microcomputer 6 generates an address from the received classification codes, col. 4, lines 45-58 and applies it to the table to determine switching to the alternate source, which reads on the claimed pointer.

Considering claims 19, 30 & 37, Vogel teaches that the system may operate in a CATV network, col. 1, lines 5-12.

Considering claims 20, 31 & 38, Vogel does not teach that the video program may be transmitted in digital form. However, Abecassis teaches video programming in digital form, see col. 4, lines 42-52; col. 11, lines 65-67 thru col. 12, lines 1-12. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Vogel to provide video programming in digital format at least for the known advantages of easier manipulation and editing.

Considering claims 21 & 28, Vogel teaches the use of a remote control, col. 6, lines 4-21. Also, Abecassis discloses the well-known use of a remote-control to enter customer preference information, col. 10, lines 52-57.

Considering claims 22 & 29, the on-screen programming technique reads on the disclosure of Abecassis, see col. 10, lines 35-57; col. 22, lines 1-61.

Considering claim 23, see Abecassis, col. 20, lines 21-67 thru col. 21, lines 1-11.

Considering claims 24-25, 32-33 & 39-40, Vogel teaches that the classification information may at least be transmitted at the beginning of a TV program, col. 4, lines 1-5; col. 6, lines 2-15. Official Notice is taken that at the time the invention was made, it was well known in the art to continuously transmit embedded information, within an ongoing TV program. It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Vogel with the feature of continuous transmission of the embedded classification code

information, at least for the desirable advantage of providing the customer with updated information.

Considering claim 26, the amended claimed method of directing an automatic channel changing function at a viewer location to achieve a cohesive viewing environment, comprising the steps of:

'providing a channel selector at a viewer location', is inherent Vogel, which is directed to a TV system that allows a customer to choose their desired programming which is tuned to by the receiver.

'transmitting, from a broadcaster to the viewing location, a TV program on a primary transmission medium, the program including additional information for directing the channel selector to automatically switch, at least temporarily, to one or more secondary transmission media', is met by the disclosure in Vogel of the classification codes embedded in TV programming, which is used by the receiver/decoder to switch to an appropriate source of programming that is consistent with the customer's viewing preferences, col. 6, lines 15-45.

The additionally claimed feature of *'carrying alternative programming directly related to the TV program on the primary transmission'*, corresponds with subject matter mentioned above in the rejection of claim 18, and is likewise analyzed.

Considering claim 27, the additional information in Vogel & Abecassis derived from customer preference information entered at the viewer location.

Considering claim 34, the claimed TV viewing system, comprising;

'a source of an audio/video TV program including a channel-change command' reads on the disclosure in Vogel that video programming is transmitted to a customer(s) with a code that causes the receiver/decoder to switch to an alternate channel/broadcaster in order to receive appropriate alternate programming, see Abstract; col. 4, lines 41-63 & col. 6, lines 15-45.

'receive the TV program'; 'detect the channel-change command'; 'automatically select on a different transmission medium alternate program material in response to the channel change command', reads on Vogel, col. 3, lines 50-68; col. 4, lines 43-65; col. 6, lines 15-45.

As for the further claimed feature of, *'providing an alternate TV program with subject matter directly related to the TV program'*, even though Vogel is directed to providing a viewer with alternate programming for the purpose of censorship, the reference does not explicitly state that the alternate material is directly related to the received TV program. Nevertheless Abecassis, which is in the same field of endeavor of providing customized versions of a TV program based on the customer's preference, teaches substituting portions of the TV program that are outside of

the classification preferences of the customer, with a version of the TV program that is within the classification of the customer, col. 4, lines 1-34; col. 7, lines 29-56; col. 8, lines 3-60; col. 9, lines 31-46 & col. 10, lines 59-65. Thus, in Abecassis the alternate material is directly related to the main program, Abstract; col. 23, lines 1-17. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Vogel with the improvement of providing a customer with alternate material from the same program, as taught by Abecassis, see col. 2, lines 47-60.

Considering claim 35, '*descriptive information*' reads on the classification information input by the customer in Vogel & Abecassis.

Considering claim 36, the claimed features correspond with subject matter mentioned above in the rejection of claims 21-22, and is likewise treated.

(10) Response to Argument

Appellant has two arguments against the Final Rejection, mailed 5-28-2008. The first argument is that Vogel does not disclose a pointer to an alternate TV channel. The second argument is that Vogel teaches away from providing subject matter directly related to the TV program. Appellant does not argue any of the claims separately.

As for the first argument, on page 5 it is argued that, “Appellant’s claims fully distinguish through the recitation of a pointer or other information...”. On page 6, appellant goes on to argue, “Vogel does not disclose a pointer to an alternate TV channel”.

First of all, examiner points out that at several instances, appellant admits that at least one of the methods used by Vogel to censor unwanted segments of a TV program, is a channel change function, see Appellant’s Brief, page 6, which reads, “...Again, although Vogel discusses a channel-change function that can provide the facility of displaying alternate material during periods of censorship...Vogel does not disclose a pointer to an alternate TV channel”. Furthermore, page 6 of appellant’s brief also cites a portion of Vogel, “...For example, a suitable pattern generator tuned to an unused television channel could be used to “electronic wallpaper” during commercial breaks”... “The alternate material selected during censorship periods can originate from a remote source, for example another television broadcast...”.

Examiner respectfully disagrees with the conclusion drawn by appellant regarding the above disclosure of Vogel. There appears to be a disconnection between the disclosure of Vogel and appellant's argument, since Vogel (as admitted by appellant) clearly teaches a channel-change function, which is the same function as appellant's invention. Thus, in order for appellant's argument to be correct, the censorship method in Vogel would need to be randomly tuning to channels or randomly changing channels.

Again, without question Vogel discloses an automated channel-change feature. The opposite of pointing to or choosing a particular channel, would be for the system to randomly change the channel. Instead, Vogel discusses a system that automatically receives classification code information and automatically tunes, i.e., changes channels to receive an alternate TV broadcast for the duration of the unwanted material, due to the received classification codes, col. 2, lines 47-63; col. 3, lines 1-6. To randomly tune to a different video source would defeat the purpose of Vogel, since the randomly tuned channel could itself contain subject matter (images or sound) that is objectionable to the viewer. This randomly tuned channel would then be subject to needing further censorship, whereas a video signal particularly selected by the system based on the classification codes of the instant receiver would already be at the level needed for the recipient's system, due to censorship.

Specifically, Vogel teaches that the "classification signal... causes the receiver to direct to its output alternative program material...", col. 2, lines 55-65.

Furthermore, it is pointed out that col. 6, lines 65-68 thru col. 7, lines 1-5, discloses, “if the result of comparison indicates that an alternative video signal is to be displayed, **causing an alternative source of video signal to be selected** for display...”, emphasis added. Thus, Vogel selects a particular video signal source (which reads on the claimed, ‘*pointing*’), in order to provide appropriate substitute programming, to a particular recipient.

Moreover, it is pointed out that Vogel teaches that the microcomputer 6 generates an address from the received classification codes, col. 4, lines 45-58 and applies it to the table to determine switching to the alternate source, which reads on the claimed ‘*pointer*’. Therefore, since Vogel provides a classification code to the receiver, which the microcomputer 6 uses for control in a channel-change procedure, to change the channel to a particular channel, the classification code in Vogel reads on the claimed ‘*pointer*’.

As for appellant's second argument that Vogel teaches away from the feature of the alternate program being directly related to the original subject matter, examiner respectfully disagrees. It is pointed out that nowhere in Vogel does the reference disclose any teachings that would suggest that the invention precludes the alternate/substitute programming from being related to the original programming. Clearly, if the channel in Vogel was changed to a channel that presented a wallpaper or a blank screen, (which are both options discussed in Vogel) then the viewer would realize that the programming has been censored.

One of ordinary skill in the art at the time the invention was made, would have readily recognized an advantage in providing the viewer with substitute material related to the original program, at least in order to maintain continuity in the program. For instance, if the movie has numerous scenes that are objectionable for a certain level of classification, then the viewer would experience numerous gaps in the presentation, which may become annoying. Instead one of ordinary skill would have recognized that it would have been beneficial to provide the viewer with an apparently seamless, uninterrupted program, wherein objectionable material is substituted with material that corresponds with the viewer's classification code level, but from the same movie.

To support this rejection, Abecassis teaches that the invention is intended as an improvement over well-known "video on demand" systems, by employing instead a "content on demand", col. 4, lines 15-32. Thus in Abecassis, the viewer is provided with content based on

their preference. Abecassis also discusses the advantage of using seamless, continuous video technology, so that the viewer's programming is not interrupted, col. 4, lines 33-41. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Vogel with the feature of providing a viewer with substitute programming related to the original programming, at least in order to provide an apparently seamless continuous viewing of the original program, as taught by Abecassis.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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